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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/829,135

04/21/2004

Jeffrey Dunmire

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EXAMINER

LAVINDER, JACK W

ART UNIT

PAPER NUMBER

3677

MAIL DATE

DELIVERY MODE

06/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/829,135	Applicant(s) DUNMIRE, JEFFREY	
	Examiner Jack W. Lavinder	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 10-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 10-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 10-11 have been rejected under 35 U.S.C. 103(a) as being unpatentable over www.fdp-magnetics.com webpage copyrighted 2000-2002 in view of Fontana, 4625508.

The webpage discloses a silver/gold link bracelet with magnets embedded behind each link (non-oval link) wherein the front faces of the magnets are generally coplanar with the rear faces of the links. The reference also discloses a clasp on each end of the plurality of links. The webpage fails to disclose the bracelet being made from titanium.

Fontana disclose a bracelet that can be made from titanium (col. 1, lines 35-45). Therefore, it would have been obvious to make the bracelet describe and shown in the webpage from titanium in order to produce a lighter and more wear resistant bracelet. The webpage discloses a silver/gold link bracelet with magnets embedded behind each link wherein the front face of the magnets are generally coplanar with the rear face of the link. The webpage fails to disclose the relative size of the face of the magnet compared to the face of the whole link, i.e., the claim calls for the face of the magnet to be at least 50 or at least 75% of a total area comprising the rear of the main body and the face of the magnet.

With regard to the relative size of the magnet to the surface area of the link, the webpage discloses various size relationships between the link's surface area and the magnet's surface area. In order to increase the magnetic effect of the bracelet one skilled in the art would increase the size and surface area of the magnet, i.e. exposed surface area, and invariably increase the ratio between the surface area of the magnet and the surface area of the link. It would have been obvious to a person having ordinary skill in the art to use a larger magnetic surface area to provide an increase in the magnetic field delivered to the wearer. This increase would improve the alleged health benefits derived from wearing the bracelet.

3. Claims 4 and 12-19 have been rejected under 35 U.S.C. 103(a) as being unpatentable over www.fdp-magnetics.com webpage copyrighted 2000-2002 in view of Fontana, 4625508 and Kundert, 2775093. The webpage discloses using a circular shape magnet in the rear surface of the link, but fails to disclose the claimed oval shaped magnet. The shape of the magnet is considered to be an obvious design choice. It would have been obvious to a person having ordinary skill in the art to change the shape of FDP's magnet to an oval shape in order to increase and optimize the surface area of contact between the magnet and the wearer's skin to improve the alleged health benefits to the wearer. One of ordinary skill in the art would know to increase the magnetic surface of the magnet by changing the shape of the magnet in order to optimize the amount of available space provided on the rear of the link. If the available surface area of the link is substantially square, a circular shaped or square shaped magnetic would optimize the available space needed to provide the optimal

magnetic surface area. If the available surface area of the link is substantially rectangular, an oval shape or a rectangular shaped magnetic would optimize the available space needed to provide the optimal magnetic surface area, which ***allegedly*** produces more beneficial health affects to the wearer.

Response to Arguments

4. Applicant's arguments filed on 4/25/2008 have been fully considered but they are not persuasive. The applicant argues that it would not be obvious to optimize the ratio of the surface area of the magnet touching the skin to the surface area of the link touching the skin. Optimizing surface areas within a framed structure is an old and well known engineering technique. Any one skilled in the art would know how to optimize, i.e., make available, the largest surface area possible for the magnets in the links of the bracelet to contact the skin to provide alleged improved health benefits to the wearer of the bracelet. The health benefits of having more surface area of the magnet touching the skin have not been proven by a credible source. The applicant supplied website article (possibly credible) that discusses the benefits of magnets in the reduction of pain being felt by the patient. Nothing in the article discusses the alleged criticality of improving the health benefits to the wearer of a bracelet by enlarging the surface area of the magnets touching the skin on the bracelet. All the applicant's invention does is to optimize the well known magnetic bracelet surface area in contact with the wearer's skin. The technique of optimizing surface area relative to another surface area holding the first area is a well known technique. When this technique is applied to the well

known magnetic bracelet and its associated links, the results obtained are predictable, i.e., larger magnet surface area in contact with the skin, which gives rise to the predictable alleged improved health benefits to the wearer of the bracelet.

The applicant argues that it is non-obvious to use a solid titanium link, when arguing the 103 rejections based on FDP Magnetics in view of Fontana. The applicant refers to the Declaration of Jeffrey Dunmire to overcome this part of the rejection. The modifying reference to Fontana discloses that titanium affords the bracelet lightness and a remarkable degree of resistance to wear, i.e. titanium links. These are the reasons one of ordinary skill in the art would use titanium for forming the links of a bracelet. The declaration discusses solving a different problem, i.e., overcoming problems associated with plated metals, with the use of titanium links. The declaration fails to discuss why it wouldn't have been obvious to make the combination of references in rejecting the claimed invention. Therefore, the rejection is still deemed to be a proper 103 combination rejection, which discloses applicant's claimed invention.

The applicant also argues that the link/magnetic surface area ratio is non-obvious as discussed in the Declaration of Jeffrey Dunmire. The declaration states that increasing the surface area of the magnet as compared to the surface area of the link produces an increase in the magnetic therapy benefits of the jewelry. This reason is a non-substantiated and non-credible reason. There is no body of evidence from a credible source that shows that increasing the surface area of the magnet in contact with the skin produces benefits in the human body.

5. This is a Request for Continuing Examination Application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack W. Lavinder whose telephone number is 571-272-7119. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on 571-272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jack W Lavinder/
Primary Examiner, Art Unit 3677
6/11/2008